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IN THE

Supreme Court of the United States

October Term, 1962.

No. 256.

ESTATE OF ANNIE E. HURST, DECEASED.

Petition of Harry J. Alker, Jr.

PETITIONER'S REPLY BRIEF.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Harry J. Alker, Jr., replies to appellees' contentions as follows:

Due to the inaccuracies contained in respondents' brief, petitioner believes it necessary to reply to them in an effort to correct them.

At the beginning of their argument (page 3) respondents argue that there is no dispute about the fact that petitioner, Harry J. Alker, Jr., exerted undue influence upon Annie E. Hurst. To the contrary, petitioner has always contended that he never committed such undue influence, and argues that the weight of the evidence upholds him in this contention and that there was not and is not any overwhelming weight against it. All there is, is suspicion and conjecture.

At the bottom of said page 3 and top of page 4, respondents argue that Alker's testimony was contradicted on the record by a wealth of disinterested testimony, and

that his credibility was thoroughly impeached with extrinsic proof. To the contrary, petitioner contends that what evidence was presented by contestants' witnesses was partial and biased as argued in his petition; further, that there was no offered extrinsic evidence that impeached his credibility; that there is no direct evidence showing even any one act of his exercising undue influence upon Mrs. Hurst. Respondents' medical proof was weak and too remote in time as to the date of the execution of decedent's will; and was disproven by Dr. Crew.

The testimony of petitioner was honest, correct and truthful, and was corroborated by impartial witnesses as well as being corroborated by Court records of his representation of decedent's son and sister, and as attorney for sister's estate, of which Annie E. Hurst was the sole heir.

On page 4 of said brief, in the second paragraph thereof, they refer to Mr. Alker's application for Mrs. Hurst's admission to Marshall Square Sanitarium, and to his testimony that he did not know that the sanitarium was exclusively for the care of the mentally ill. Dr. Barr's letter, in itself, indicates that such was the case as it states that Mrs. Hurst's mental condition was far more grave than he apparently realized. In other words, such statement verifies Alker in that he did not believe Mrs. Hurst to be mentally ill to any great extent, if any, at the time he prepared such application.

On the last paragraph of page 4 of respondents' brief, they argue that Doctor Crew, Mrs. Hurst's personal physician, testified that she seemed normal to him on December 1 and December 3, 1949, but, on December 12, he discovered that she suffered from advanced cerebral arteriosclerosis. They do not bring out the fact, however, that Dr. Crew further testified that such condition, discovered on December 12, was caused by her fall at that time, which, of course, puts a different color on his testimony.

Petitioner contends that the action of Mrs. Hurst in making a will when she did was the natural thing to do, as

she was then fully aware of what her estate consisted. Even Mr. Horace Rhoads testified that, at Mr. Alker's directions, he went over the schedule of her assets and securities with her before she executed her will.

It is further contended by petitioner that there was never any reason or necessity to question the decedent about her will and estate as respondents suggest. To the contrary, none of this was necessary, as Mrs. Hurst knew exactly how she wanted to will her estate and to whom; and she so directed her lawyer, the Hurst family lawyer so to do. Also, it is to be noted that no one could know at that time how much of her estate and her appointed estate would be left at the time of her death.

Petitioner denies his testimony was unbelievable, and the Courts had no right in law to so hold. He alleges it was strong, truthful and uncontradicted.

As to the extrinsic evidence, petitioner claims that such evidence is improper and should be found of no effect as to contradicting his credibility.

This Honorable Supreme Court is also requested by petitioner to keep in mind and consideration that the other parties hereto are also strangers to the blood and that Mrs. Hurst had no relatives to whom she could will her estate; that the persons closest and dear to her were Dr. Robert S. Crew, (Susie) Mary Lee Dandridge, and Harry J. Alker, Jr.—her doctor, her maid, and her lawyer—all of long standing friendship with her.

WHEREFORE, he prays that this petition be granted.

Respectfully submitted,

HARRY J. ALKER, JR.,
Petitioner.

ROBERT M. TAYLOR,
Attorney for Petitioner.